

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO: THE DIRECT  
PURCHASER CLASS ACTION

Master File No. 3:17-md-02801-JD  
Civil Action No. 3:14-cv-03264-JD

**[PROPOSED] ORDER GRANTING  
DIRECT PURCHASER CLASS'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT WITH DEFENDANTS  
AVX, ELNA, HOLY STONE, KEMET,  
PANASONIC, SHINYEI, SHIZUKI AND  
TAITSU, APPROVING FORM AND  
MANNER OF NOTICE, AND  
ESTABLISHING PROCESS FOR FINAL  
APPROVAL**

Date: June 25, 2020  
Time: 10:00 a.m.  
Courtroom: 11, 19th Floor

Master File No. 3:17-md-02801-JD  
Civil Action No. 3:14-cv-03264-JD

**[PROPOSED] ORDER GRANTING DIRECT PURCHASER CLASS'S MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

This matter is before the Court on the Motion by plaintiffs Chip-Tech, Ltd., Dependable Component Supply Corp., eIQ Energy, Inc., and Walker Component Group, Inc., on behalf of the Direct Purchaser Class (collectively, the “Settlement Class”) for preliminary approval of the Settlement Class’s settlement agreements (the “Settlement Agreements”) with defendants AVX Corporation (“AVX”); ELNA Co., Ltd. and ELNA America Inc. (collectively, “ELNA”); Holy Stone Enterprise Co., Ltd., Milestone Global Technology, Inc. (D/B/A HolyStone International) and Vishay Polytech Co., Ltd. (collectively, “Holy Stone”); KEMET Corporation and KEMET Electronics Corporation (collectively, “KEMET”); Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., and SANYO North America Corporation (collectively “Panasonic”); Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd. and Shinyei Corporation of America, Inc. (collectively, “Shinyei”); Shizuki Electric Co., Inc. (“Shizuki”); and Taitso Corporation and Taitso America, Inc. (collectively “Taitso”; AVX, ELNA, Holy Stone, KEMET; Panasonic, Shinyei; Shizuki and Taitso collectively, the “Settling Defendants”). MDL Dkts. \_\_, 1068.

Having considered the Class’s Motion; the Settlement Agreements; the declarations of Joseph R. Saveri and Kendall S. Zylstra and the exhibits thereto; the proposed Long Form Notice and Summary Notice to the Settlement Class; the pleadings and other papers filed in this Action; and the statements of counsel and the parties, and for good cause shown,

IT IS HEREBY ORDERED as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreements.

2. The Court hereby gives its preliminary approval of the Settlement Class’s Settlement Agreements with AVX, ELNA, Holy Stone, KEMET, Panasonic, Shinyei, Shizuki and Taitso, subject to a hearing on the final approval of the Settlement Agreements (the “Final Approval Hearing”).

3. In light of the Court’s order dated November 14, 2018 (Dkt. 2231) certifying the Direct Purchaser Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court’s order dated February 28, 2019 (Dkt. 2282) approving the Settlement Class’s plan for notice of pendency of class action, the exclusion

1 notices received during the opt-out period by the order, and the now proposed Settlements in this  
 2 Action, the Settlement Class is defined as follows:

3 All persons (including individuals, companies, or other entities) that  
 4 purchased Capacitors (including through controlled subsidiaries, agents,  
 5 affiliates or joint ventures) directly from any of the Defendants, their  
 6 subsidiaries, agents, affiliates or joint ventures from January 1, 2002 to  
 7 December 31, 2013 (the "Class Period"), and such persons are: (a) inside  
 8 the United States and were billed or invoiced for capacitors by one or more  
 9 Defendants during the Class Period (*i.e.*, where capacitors were "billed to"  
 10 persons within the United States); or (b) outside the United States and were  
 billed or invoiced for capacitors by one or more Defendants during the  
 Class Period, where such capacitors were imported into the United States  
 by one or more Defendants (*i.e.*, where the capacitors were "billed to"  
 persons outside the United States but "shipped to" persons within the  
 United States).

11 Excluded from the Settlement Class are: (1) Defendants (and their  
 12 subsidiaries, agents, and affiliates); (2) shareholders holding more than  
 13 10% equity interest in Defendants; (3) each member of the Settlement  
 14 Class that timely requests exclusion by "opting out"; (4) governmental  
 entities; and (5) the judges and chambers staff in this case, including their  
 immediate families.

15 4. Also excluded from the Settlement Class are those that excluded themselves in  
 16 accordance with the terms of the 2019 Notice of Certification of Class of Direct Purchasers of  
 17 Capacitors.

18 5. Pursuant to Fed. R. Civ. P. 23(g), the Court has previously appointed the Joseph Saveri  
 19 Law Firm as Lead Class Counsel.

20 6. The Court finds that the settlements with the Settling Defendants fall within the range of  
 21 possible approval and are reasonable. There is sufficient basis for notifying the Settlement Class and for  
 22 setting a Final Approval Hearing. Accordingly, Notice to the Settlement Class is appropriate here,  
 23 Notice is hereby approved, and members of the Settlement Class ("Settlement Class Members") should  
 24 be notified of the proposed settlements.

25 7. The Court finds that the proposed plan of allocation described in the Motion is  
 26 sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved, subject to  
 27 further consideration at the Final Approval Hearing to be held as set forth below.  
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8. The Court will conduct a Final Approval Hearing on September 3, 2020 at 10:00 a.m. At the Final Approval Hearing, the following will be determined:

a. Whether the proposed Settlement Agreements are fair, reasonable, and adequate and should be granted final approval;

b. Whether final judgment should be entered dismissing the claims of the Settlement Class against the Settling Defendants with prejudice;

c. Whether Lead Class Counsel's application for payment of attorneys' fees and reimbursement of costs and expenses should be granted;

d. Such other matters as the Court may deem appropriate.

9. The Court appoints Rust Consulting, Inc. as administrator (the "Claims Administrator").

10. The notices attached to this Order constitute due, adequate and sufficient notice and satisfy the requirements of the Federal Rules of Civil Procedure and of due process. Accordingly, Notice is approved for dissemination to the Settlement Class.

11. The Court approves the long-form notice attached hereto as **Exhibit A** ("Long-Form Notice"). The Court also approves the summary notice attached hereto as **Exhibit B** ("Summary Notice").

12. The Court finds that taken together, (a) mailing of the Long-Form Notice (U.S. Mail or electronic mail) to Settlement Class Members; (b) publication of the Summary Notice; and (c) Internet posting of the Long-Form Notice are: (i) the best notice practicable; (ii) reasonably calculated to, under the circumstances, apprise Settlement Class Members of the proposed Settlement Agreements and of Settlement Class Members' right to object or exclude themselves as provided in the Settlement Agreements; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

13. The Settlement Class's Claims Administrator shall provide notice of the Settlement Agreements. The Claims Administrator shall provide direct notice of the Settlement Agreements to all Class Members no later than July 6, 2020. Such notice shall be sent either by first class U.S. mail

1 postage prepaid or by electronic mail. The Claims Administrator shall publish the Summary Notice in  
2 the national edition of the *Wall Street Journal* no later than July 6, 2020. The Claims Administrator  
3 shall also cause a copy of the class notices and Settlement Agreements to be posted on at least two  
4 Internet websites directed toward the capacitors and passive electronics industry.

5 14. By no later than July 6, 2020, the Claims Administrator shall cause the Settlement  
6 Notice to be mailed by first-class mail, postage prepaid, to Settlement Class Members pursuant to the  
7 procedures described in the Settlement Agreements, the Motion, the Declaration of Kendall S. Zylstra  
8 and the Long-Form Notice. By no later than July 10, 2020, the Claims Administrator shall file with the  
9 Court an Affidavit of Compliance with Notice Requirements.

10 15. All costs incurred in disseminating Notice and administering the Settlement shall be  
11 paid from the Settlement Fund pursuant to the Settlement Agreements, with certain notice and  
12 administration costs incurred prior to the Effective Date advanced as provided in the Settlement  
13 Agreements. The Court grants Lead Class Counsel's request for up to \$125,000 to be paid from the  
14 Settlement Fund to the Claims Administrator for expenses related to the provision of notice to the  
15 Settlement Class Members and for processing and auditing the claim forms. The Court also approves  
16 payment of publication notice in the *Wall Street Journal* from settlement funds in an amount Lead  
17 Class Counsel estimates will be less than \$75,000.

18 16. The Settlement Class shall file on or before July 10, 2020 their motion for final approval  
19 and for attorneys' fees and reimbursement of litigation costs and expenses.

20 17. Settlement Class Members shall have until August 14, 2020 to submit a Claim Form. All  
21 Claim Forms must be postmarked or submitted via the Settlement Website by this date.

22 18. Settlement Class Members shall have until August 14, 2020 to exclude themselves (opt-  
23 out) of the proposed Settlements. All requests for exclusion must be postmarked by this date.

24 19. Any Settlement Class Member who wishes to be excluded (opt-out) from the Settlement  
25 Class must, in a manner consistent with the process described in the Notices approved by the Court,  
26 mail a written request for exclusion to the Claims Administrator on or before August 14, 2020.  
27 Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a  
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group or class, but must in each instance individually or personally execute a Request for Exclusion. Requests for Exclusion must set forth in writing the Name and Address of the person or entity who wishes to be excluded as well as all trade names or business names and addresses of such persons or entities, and must be signed by the Settlement Class Member seeking exclusion. Settlement Class Members may request exclusion from the Settlement Class without regard to whether such members previously excluded themselves from the certified litigation class pursuant to the 2019 Notice of Certification of Class of Direct Purchasers of Capacitors. A request for exclusion from the Settlement Class does not constitute a request for exclusion from the litigation class, for which the period to request exclusion (opt-out) is now closed and final.

20. No later than August 31, 2020, Lead Class Counsel shall file with the Court a list of all persons or entities who have timely requested exclusion from the Settlement Class. Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlements from which they excluded themselves, will not be bound by any further orders or judgments entered for or against the Settlement Class under the Settlements, and will preserve their ability independently to pursue any claims they may have only with respect to those Settling Defendants.

21. Settlement Class Members will have until August 14, 2020 (35 days after the Class files their motions for final approval and for attorneys' fees and reimbursement of litigation costs and expenses) to object to the proposed Settlements. All objections must be postmarked by this date.

22. Any oppositions to the Settlement Class's motions for final approval and for attorneys' fees and reimbursement of litigation costs and expenses must be filed by August 14, 2020.

23. No later than August 24, 2020, ten days prior to the Final Approval Hearing, the Settlement Class may file a reply to any responses to their motions for final approval and for attorneys' fees and reimbursement of litigation costs and expenses.

24. All Settlement Class Members who did not properly and timely request exclusion from the Settlement Class shall, upon final approval of the Settlements, be bound by all the terms and provisions of the Settlement Agreements, including the releases, waivers and covenants described in the

1 Settlement Agreements, whether or not such Settlement Class Member objected to the Settlements and  
2 whether or not such Settlement Class Member makes a claim upon the settlement funds or receives  
3 consideration under the Settlement Agreements.

4 25. Lead Class Counsel will continue to represent Settlement Class Members who do not  
5 timely object and do not have an attorney enter an appearance on their behalf.

6 26. Any Settlement Class Member may, but need not, submit comments or objections to the  
7 Settlement Agreements, the Plan of Allocation or entry of a Final Approval Order and Judgment  
8 approving the Settlement Agreements, by filing written objections with the Court no later than the  
9 August 14, 2020, copies of which shall be served on all counsel listed in the Class Notice. Failure to  
10 timely file and serve written objections will preclude a Settlement Class Member from objecting to the  
11 Settlements.

12 27. Any Settlement Class Member making an objection (an “Objector”) must sign the  
13 objection personally, even if represented by counsel, and provide the Settlement Class Member’s name  
14 and full residence or business address and a statement signed under penalty of perjury that the  
15 Settlement Class Member was a member of the Settlement Class. Any objection must state why the  
16 Objector objects to the Settlement Agreement(s) and provide a basis in support, together with any  
17 documents such person wishes to be considered in support of the objection. If an Objector intends to  
18 appear at the Final Approval Hearing, personally or through counsel, the Objector must include with  
19 the objection a statement of the Objector’s intent to appear at the Final Approval Hearing. The Objector  
20 must file a Notice of Intent to Appear no later than August 24, 2020, ten (10) days prior to the Final  
21 Approval Hearing, copies of which shall be served on all counsel listed in the Class Notice. If counsel  
22 is appearing on behalf of more than one Settlement Class Member, counsel must identify each such  
23 Settlement Class Member and each such Settlement Class Member must have complied with this Order.

24 28. Only Settlement Class Members who have filed and served valid and timely objections  
25 accompanied by Notices of Intent to Appear shall be entitled to be heard at the Final Approval Hearing.  
26 Any Settlement Class Member who does not timely file and serve an objection in writing in accordance  
27 with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived  
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1 any objection to the Settlement Agreements and entry of a Final Approval Order and Judgment,  
2 whether by appeal, collateral attack, or otherwise.

3 29. Each Settlement Class Member shall retain all rights and causes of action with respect to  
4 claims against all Defendants other than the Settling Defendants.

5 30. Settlement Class Members need not appear at the hearing or take any other action to  
6 indicate their approval.

7 31. Upon entry of the Final Approval Order and Judgment, all Settlement Class Members  
8 will be enjoined from proceeding against the Settling Defendants and all other Released Parties with  
9 respect to all of the Released Claims, consistent with the Settlement Agreements.

10 32. All further proceedings as to the Settling Defendants are hereby stayed, except for any  
11 actions required to effectuate or enforce the Settlement Agreements, or matters related to the Settlement  
12 Fund, including applications for attorneys' fees, payment of costs, and service awards to Class  
13 Representatives.

14 33. The Court retains exclusive jurisdiction over this action to consider all further matters  
15 arising out of or connected to the Settlements.

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17 **IT IS SO ORDERED.**

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19 Dated:

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22 HON. JAMES DONATO  
23 United States District Judge  
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